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SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2011 AUG 15 AM 10:43

SANDRA K MARKHAM, CLERK  
BY: Ivy Rios ✓

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

STATE'S REPLY RE: DEPOSITON  
OF JOHN SEARS

Assigned to Hon. Warren R. Darrow  
Division PTB

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned replies to the response of John Sears. This reply is supported by the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

When the State requested a trial interview with John Sears, he attempted to set conditions and or limit the scope of the interview. At the same time he "respectfully decline(d) the invitation". Mr. Sears' response declining to be interviewed is not cooperating in the granting of a personal interview pursuant to Rule 15.3(3) of the Arizona Rules of Criminal Procedure. The only issue before this Court is whether or not Mr. Sears' testimony is "material to the case".

MATERIALITY OF SEARS' TESTIMONY

(1) *Calloway golf club cover:*

Prior to Defendant's arrest for the murder of Virginia Carol Kennedy, he delivered to John Sears the Calloway golf club cover. This significant piece of evidence was the subject of a second search warrant on July 3, 2008 at Defendant's Alpine Meadows residence. Just before this search, Defendant removed the club cover from his garage.

1 When Defendant was arrested on October 23, 2008 the Yavapai County Sheriff's Office  
2 learned he gave the Calloway golf club cover to Mr. Sears. Mr. Sears controlled and possessed  
3 evidence sought in a homicide case for months.

4 The stipulation in the first trial was entered into to avoid Mr. Sears from testifying and  
5 potentially violating Defendant's Sixth Amendment Rights. This stipulation is proof positive of the  
6 materiality of Sears's testimony on this evidence. There will be no stipulation into evidence for  
7 foundation of the Calloway golf club cover in this case.

8 In the Sears deposition there will be no questions of a confidential/privileged nature  
9 concerning the Calloway golf club cover. Questions concerning Mr. Sears' conduct from the date  
10 he took possession until he turned the evidence over to law enforcement will be asked.

11 Mr. Sears put himself into the chain of custody with this piece of evidence and his testimony  
12 is "unique and not obtainable by other reasonably available means". *State v Walker*, 185 Ariz. 228,  
13 914 P.2d 1320 (Ariz. App. 1995).

14 (2) *Anonymous email and voice in the vent:*

15 The Defendant disclosed to Mr. Sears the voice in the vent event several weeks before Mr.  
16 Sears received the anonymous email in June of 2009. The timing of disclosure on both items was  
17 orchestrated by the Defendant.

18 Mr. Sears told law enforcement that he conducted his own investigation into these two  
19 events. As it turned out, the anonymous email and voice in the vent was the genesis of Defendant's  
20 third party culpability defense.

21 On May 25, 2010 the State filed a motion in limine to preclude the Defendant from admitting  
22 the June 2009 anonymous email. On June 3, 2010, in oral argument Mr. Sears argued strenuously  
23 for the admissibility of the anonymous email and persuaded the Court to deny the State's motion.

24 On July 21, 2009, Defendant Steve DeMocker, John Sears and investigator Richard  
25 Robertson met with representatives of the Yavapai County Attorney's Office. This meeting was  
26 requested by Mr. Sears for the purpose of discussing the voice in the vent and the anonymous  
email. The entire interview was recorded and transcribed. Before the start of this interview Mr.  
Sears said the following regarding the attorney/client privilege:

//

1 "SEARS: uh, that, that relate to the same subject matter. I think we've all agreed and I  
2 had a conversation with, uh, Joe and, uh, Sheila and Dennis, uhm, uh, several weeks ago about  
3 this that, that, uh, **we agree that Steve will waive any claim of attorney/client privilege** here  
4 today to talk about these particular matters ..."

Reporter's Transcript July 21, 2009 Interview with Steven DeMocker, p 2 lines 22-23; p 3 lines 1-5 **Exhibit A**

5 Through out the lengthy recorded interview, Mr. Sears assisted with questions to  
6 Defendant or he volunteered statements to the investigators clarifying issues. No reasonable  
7 person could read this interview transcript without concluding Defendant's waiver of the  
8 privilege was consensual and voluntarily made. This waiver of attorney/client privilege is  
9 contemplated by the ethical rules.

ER 1.6(a) of the Rules of Profession Conduct state:

10 "A lawyer shall not reveal information relating to the representation of a client unless  
11 the client gives informed consent. The disclosure is impliedly authorized in order to  
12 carry out the representation or the disclosure is permitted or required by paragraphs  
13 (b), (c), or (d)."

ER 1.6(d) (4) states:

14 "(d) A lawyer may reveal such information relating to the representation of a client to the  
15 extent the lawyer reasonable believes necessary:  
16 (4) ... to establish a defense to a criminal charge..."

17 The ethical rules allow an attorney to divulge confidential communications when the  
18 lawyer reveals communications to establish a defense to criminal charges. Mr. Sears' purpose for  
19 requesting an interview with the county attorney was to establish a defense to the murder charge.

20 When it was discovered that the Defendant authored the anonymous email and the voice in  
21 the vent was apparently fabricated, the entire defense team was forced to withdraw for ethical  
22 reasons causing a mistrial.

23 The Defendant was subsequently charged with Fraud Schemes, Conspiracy, two counts of  
24 Forgery, Tampering with Physical Evidence and Contributing to the Delinquency of a Minor.  
25 Like the golf club cover, Mr. Sears injected himself into the vent and the anonymous email events  
26 and his testimony is "unique and not obtainable by other reasonably available means". *Walker,*  
*supra.*

(3) *Virginia Carol Kennedy Testamentary Trust*

1 Beginning January, 2009 through October, 2009 Mr. Sears was involved in conversations  
2 with Janice DeMocker, John DeMocker, Jim DeMocker, Katie DeMocker, and Renee Girard  
3 regarding the Hartford Life Insurance proceeds. Defendant's jail calls to these witnesses were  
4 recorded. None of Defendant's jail conversations to said witnesses fall under the veil of the  
attorney/client privilege.

5 The Defendant was the owner of two Hartford Life Insurance policies on the life of  
6 Virginia Carol Kennedy having a value of \$750,000.00. In August, 2008, Defendant's claim  
7 against these insurance proceeds was denied by the Hartford Insurance Company because he was  
8 a suspect in her murder. Thereafter the Hartford Insurance Company repeatedly denied  
9 Defendant's claim to the proceeds.

10 On January 2, 2009, the Defendant told Janice and John DeMocker of a meeting he just  
11 had with Mr. Sears and the \$750,000.00 in insurance proceeds was forthcoming. On January 17,  
12 2009, the Defendant advised Ms. Girard that Mr. Sears retained attorney Robert Schmidt as his  
13 estate attorney. On February 17, 2009 the Defendant told Ms. Girard that Mr. Sears just gave him  
14 very heartening news on the financial front. On March 3, 2009, Mr. Sears notarized Defendant's  
15 signature on a Disclaimer of all Rights, Title and Interest in the Hartford Life Insurance policies.  
This act does not fall under the attorney/client privilege.

16 On July 10, 2010, Mr. Sears secured Defendant's signature on the Acceptance of Resignation  
17 and Appointment of Successor Trustee for the Kennedy Testamentary Trust. This document  
18 appoints Ms. Girard Successor Trustee of the Kennedy Testamentary Trust. Ms. Girard has said that  
John Sears recommended her to be the Successor Trustee.

19 On August 4, 2009 the Defendant tells Ms. Girard that Mr. Sears wants her to sign the  
20 acceptance of Successor Trustee for the Virginia Carol Kennedy Testamentary Trust. On August  
21 7, 2009 the Defendant instructs Katie to meet with Mr. Sears to go through banking procedures to  
22 move money out of the Estate and that he will be emailing her with electronic bank routing  
information.

23 On August 8, 2009, the Defendant tells Janice DeMocker Katie will wire transfer  
24 \$350,000.00 to her and she will pay the \$350,000.00 to Sears (\$100,000.00) and Osborn Maledon  
25 (\$250,000.00). On August 27, 2009 Katie wires \$350,000.00 of Estate funds to Janice  
26 DeMocker's bank account. The next day, Janice DeMocker wires \$100,000.00 to John Sears and  
\$250,000.00 to Osborn Maledon.

1 On October 12, 2009, the Defendant tells Ms. Girard that Mr. Sears instructed the second  
2 money transfer from the Estate a week after Charlotte turns 18. On October, 19, 2009 the  
3 Defendant instructs Ms. Girard to move \$350,000.00. On October 19, 2009 Ms. Girard transfers  
4 \$350,000.00 into a joint bank account of the Defendant and Charlotte DeMocker. On the same  
5 day the money is wired to the account of Janice DeMocker. On October 27, 2009 Janice  
6 DeMocker mails out two bank checks; a check in the amount of \$100,000.00 is sent to John  
Sears; and the second check for \$250,000.00 is sent to the law firm of Osborn Maledon.

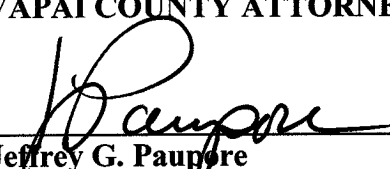
7 The information from John Sears concerning his interaction with other witnesses does not  
8 involve privileged communications with the Defendant. Mr. Sears is a material witness regarding  
9 chain of custody for the Disclaimer and Appointment of Successor Trustee making his testimony  
10 "unique and not obtainable by other reasonably available means". *Walker, supra.*

### 11 CONCLUSION

12 The State respectfully moves this Court for an Order setting the deposition of John Sears to  
13 be held in open court and on the record. Objections to either the form or content could quickly be  
14 ruled on by the court and the deposition could continue to its conclusion.

15 **RESPECTFULLY SUBMITTED** this 15th day of August, 2011.

16 **Sheila Sullivan Polk**  
17 **YAVAPAI COUNTY ATTORNEY**

18  
19 By:   
20 **Jeffrey G. Paupore**  
21 **Deputy County Attorney**

22  
23 **COPY** of the foregoing **Emailed** this  
24 15th day of August, 2011, to:

25 Honorable Warren R. Darrow  
26 Division PTB  
Yavapai County Superior Court  
Via email to Diane Troxell: [DTroxell@courts.az.gov](mailto:DTroxell@courts.az.gov)

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20  
21 By:  \_\_\_\_\_

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1        State of Arizona v. Steven DeMocker, CR-2010-01325

2                    Interview with Steven DeMocker

3                    Interviewed by Randy Schmidt

4                    Date: July, 21, 2009

5 \_\_\_\_\_  
6 Present: Detective Randy Schmidt  
7            Detective Jimmy Jarrell  
8            Joe Butner  
9            Richard Robertson  
10          John Sears  
11          Steven DeMocker

12 SCHMIDT:            Okay.    And it is just about 10:00  
13 o'clock on the 21st of July 2009.    Here at the County  
14 Attorney's Office in the Hastings Room.    Uh, I'm Randy  
15 Schmidt with the County Attorney's Office, Investigator.  
16 We also have Joe Butner; we also have Richard Robertson,  
17 uh, with the Defense team, Mr. DeMocker and John Sears  
18 here.    And we're, the purpose of this at least as I  
19 understand it is to go over two things, one is, uhm,  
20 primarily go over some notes that, that you've made in  
21 reference to a conversation that you were party to of  
22 for, uh, for whatever and, and, and I apologize first of  
23 all that I don't know how good my copy is I can't read a  
24 lot of this and I understand that this, you were

1 scribbling this with your three inch pencil or two inch  
2 pencil or whatever it is.

3 DEMOCKER: A dull, a dull stubby pencil --

4 SCHMIDT: Okay. Uh, --

5 DEMOCKER: -- Ballanced on a toilet.

6 SCHMIDT: Okay. Uh, what I'd like to do first  
7 is just give me, uh, if you could give me a brief  
8 overview of how you come about this, you know, the  
9 conversation. Go into some --

10 SEARS: Randy, can we, can we just put a  
11 couple of things on this tape --

12 SCHMIDT: Yeah.

13 SEARS: -- that I think we've all agreed  
14 about just so that we start upfront --

15 SCHMIDT: Okay.

16 SEARS: -- about the scope of this that,  
17 that you're right we're going to talk about, about this,  
18 this conversation inside the jail and then I presume  
19 we're going, we're going to talk about some e-mails that  
20 were sent to me, --

21 SCHMIDT: Correct.

22 SEARS: -- uh, that, that relate to the same  
23 subject matter. I think we've all agreed and I had a

24



1 conversation with, uh, Joe and, uh, Sheila and Dennis,  
2 uhm, uh, several weeks ago about this that, that, uh, we  
3 agree that Steve will waive any claim of attorney/client  
4 privilege here today to talk about these particular  
5 matters but that everyone agrees, uh, on both sides that  
6 that doesn't constitute some larger waiver of the  
7 privilege generally and, and I don't, I, I, I think  
8 that, uhm, your office is onboard with that... is that  
9 right, Joe?

10 BUTNER: That is correct.

11 SEARS: Okay. And then, uh, and the other  
12 thing is that, uhm, given the unusual circumstances of,  
13 of, uh, a law enforcement interview of the defendant in  
14 a Capital case, uh, pretrial, uh, if, if there comes a  
15 time when Steve wants to either take a break or confer  
16 with, uh, with Rich and me if we could honor that  
17 request. I don't know that that's going to happen but  
18 if we could agree now that, that might happen at some  
19 point could find a way to do that.

20 BUTNER: That's agreeable.

21 SEARS: Okay. Thank you. I think that's  
22 really all I want --

23 SCHMIDT: Okay.

24